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## SOME SOCIAL ASPECTS OF THE MEXICAN CONSTITUTION OF 1917<sup>1</sup>

The constituent convention met at Querétaro, it will be remembered, from December 1, 1916, to January 31, 1917, for the purpose of amending the constitution of 1857.<sup>2</sup> On February 5, 1917, about two months from the first date, the amended constitution was promulgated. The fact that this was possible within a comparatively short space of time is all the more remarkable when we consider the unsettled political, social, and economic condition of the people during the recent revolutionary period. More than that, in view of the disadvantages under which Mexico has labored for practically centuries, the breadth of mind and deep insight into present-day problems, as revealed by the various provisions of this document, are especially worthy of note. It embodies reforms which many students of modern social progress deem essential in any comprehensive scheme for social welfare. Various phases of social activity, usually left to the police powers of the nation, state, and municipality, are here deemed worthy of insertion into a national constitution. At least three national constitutions, framed and adopted since 1917, incorporate reforms of very similar nature: namely those of Germany (1919), of Peru (1919), and of Czechoslovakia (1920). A comparison of these four documents will reveal the fact that the constitution of Mexico is neither unduly radical nor unduly proletarian in character.

It is not the purpose of this paper to present a comprehensive study of the social aspects of this constitution. The subject is far too large and the necessary materials far too difficult of

<sup>1</sup> Read before Annual Meeting Southwestern Political Science Association. Austin, Texas, March 25, 1921.

<sup>2</sup> Sources: *Constitución de los Estados Unidos Mexicanos* (official edition); and H. N. Branch, *The Mexican Constitution of 1917 compared with the Constitution of 1857*. Annals of the American Academy of Political and Social Science. May, 1917.

access to warrant such a complete study at this time. That which is important after all is the instrument itself. The paper will, therefore, deal in condensed form only with those sections of the constitution which emphasize more particularly problems of social welfare.

The reasons for incorporating social reforms in the document itself are often found in legislation proposed after the adoption of a constitution. An act of this nature is the famous agrarian measure presented by President Obregón to the Congress, December 1, 1920.<sup>3</sup> The preamble recites that it is time to put into effect the plan of the revolutionists to improve more effectively the land, abolish the political and economic slavery of the proletariat, and establish peace and harmony in the state. The native soil, it continues, is capable of supplying the necessities of life for a large population and should furnish the foundation for a strong and progressive country. The nation is not strong and progressive, however,

because of the monopoly of land which impedes its cultivation and discourages the utilization of its fertility . . . . The monopoly of land is responsible for the enormous extent of uncultivated land, about ninety per cent of the territory in the Republic suitable for agricultural purposes. Such a state of affairs was the cause of the amortization of church property during the reform period, and would at present amply justify a similar measure in favor of the rural and city proletariat, which lack property of any kind, and which is eager to use and reap the benefits even of a small part of the land which legally belong to it. . . . . Whatever may be the ideas expressed concerning social justice and the rights of man, his inherent and inalienable right to the land for its cultivation and for the enjoyment of the whole product of his labor must be recognized, since the soil which sustains him constitutes the natural field for his productive activity and the sole origin of all wealth, both for the elements most essential to his subsistence and for the raw materials of industry. Such being the case, the privilege which the law grants to the monopolies of national territory can reach such a point, in accordance with these same laws, as to bring about absolute privation to those who

<sup>3</sup> "Mexican Land Reform," in *The Nation*, February 9, 1921, CXII, No. 2901, pp. 218-221.

lack such privileges; and even though such an extreme situation has not arisen yet, there is no doubt that as long as the present state of rural proprietorship remains unchanged the workers will be faced by the imperative necessity of accepting the conditions imposed upon them in exchange for permission to use the land which is absolutely necessary for their existence.

Article One of the measure contains the revolutionary principle that

The Government recognizes the inalienable and inherent right of every man to possess and cultivate for himself a piece of land, which, with reasonable care, shall be sufficient for his personal needs and those of his family.

To carry out this principle, lands will be expropriated from rural estates, from real property undeveloped for the past five years, and from lands cultivated by crude and antiquated methods. Rural properties, however, which have established modern ways of cultivation will not be expropriated. The holdings granted to each individual must not be less than five nor more than twelve hectares. The grantee must in every case be a Mexican citizen, either by birth or naturalization, and in the full enjoyment of civil rights. The measure excludes citizens owning more than twenty hectares and those who do not possess habits of industry and the ability to cultivate the land properly. The grantee has, however, no rights to forests and waters on the property so granted; these resources are governed by special laws. Moreover, the grantee must continue to cultivate the soil regularly. If the land remains uncultivated for only one year, the grantee loses right to the land but has the right to the improvements which he has made on it. The price paid by the grantee will be the same that the nation must pay the expropriated plus five per cent for organization and distribution. The grantee has a time allowance of twenty years, but he must make annual payments. The title to the land, however, rests in the nation until the whole amount is paid. The size of the plots granted should be inversely proportional to the value of the land, computing this value as much by the intrinsic quality of

the soil as by the location with respect to the highways of traffic and the consuming centers. The size of the plots must in all cases be sufficient to maintain a farmer and his family and in addition must permit the accumulation of small savings to encourage thrift. "Elderly Mexican women and widows will also have the right to acquire pieces of land for their own benefit and not for the benefit of other persons." Agrarian commissions will be created having control of the granting of these holdings in each community.

The constitution gives to the people themselves very large powers in the control of the natural resources. Through the federal government the people regulate the development of these resources, and likewise prevent their deterioration, in order to conserve them and to distribute equitably the public wealth. The government may, therefore, impose limitations upon private property whenever the public weal may demand, just as it protects property from damage detrimental to human society in general. It may aid settlements or hamlets situated on private property by providing them with additional land and water from adjoining estates in sufficient amount to satisfy the needs of their inhabitants. In order, however, to respect carefully the rights of small land holdings, the famous land grants of January 6, 1915, are confirmed (Art. 27).

The nation, moreover, has sovereign and inalienable rights of ownership in all minerals and mineral substances from which metals and commercial metaloids are made. It also possesses the right of ownership in the case of precious stones, rocksalt, salt lakes, products derived from the decomposition of rocks, fertilizing phosphates, solid fuels, petroleum, and all solid, liquid, and gaseous hydro-carbons (Art. 27).

In accordance with this doctrine, Mexico maintains the position that the ownership of surface soil does not confer ownership of subsurface resources, unless such additional rights have been granted. Such a stand is of international importance, at least in the question of petroleum. May we not say that Mexico is definitely within her rights, since she is proceeding according to the interpretation of sound public law? The United States

Supreme Court, for example, in the celebrated case *The Ohio Oil Company versus Indiana* (177 U. S. 209), held that ownership in oil and gas beneath the soil does not vest in the owner of the surface soil, or in the ultimate product, until such oil and gas have been brought to the surface and reduced to possession; and that by the very nature of petroleum, it

is a public thing, subject to the absolute control of the State, which, although it allows it to be reduced to possession, may at its will, not only regulate it, but wholly forbid its future taking.

If a commonwealth of the United States of North America possesses this right, the sovereign, independent nation of Mexico assuredly possesses a similar or even greater one. Such right does not, of course, excuse Mexico from failure to comply with its treaty obligations nor with laws Mexico has itself enacted in this regard, unless there are valid reasons for the abrogation of such treaties and for the repeal of such laws.<sup>4</sup>

The nation possesses full control and ownership of all territorial seas, lakes, inlets of bays, interior lakes, and natural formations connecting flowing waters, principal rivers and their tributaries; rivers, streams, and ravines, bounding national territory or that of a state; waters extracted from mines; waters in beds, banks of lakes and streams already mentioned; and the development of waters passing from one landed property to another (Art. 27).

The constitution is no less explicit in prescribing the method of acquiring ownership in the national lands and water rights. Ownership in these properties can be acquired only by native born or naturalized citizens, and by Mexican civil and commercial companies. Foreigners may acquire ownership in such properties only by agreeing, through the Department of Foreign Affairs, to be considered Mexicans in respect to such ownership, and by renouncing absolutely the right to invoke the protection of their governments in respect to such ownership. Any attempt to evade this regulation, will entail complete forfeiture of such

<sup>4</sup> "Sub-Surface Petroleum is not Private Property" in *The Mexican Review*, December, 1920, pp. 6-8.

rights. Under no circumstances, however, will the Mexican Government confer such rights within one hundred kilometers of the frontier, or within fifty kilometers of the seacoast. "Concessions to develop mines, waters, or mineral fuels in the Republic of Mexico" are subject to the same rules and regulations (Art. 27).

A large place is, in addition, given to labor and social welfare. The national and state legislative bodies are clothed with large powers regulating social betterment. Certain specific reformative measures are to be passed governing every specie of contract labor. Legislation shall establish a maximum eight hour day and a seven hour night of labor for all male employees; and a maximum six hour day for children between the ages of twelve and sixteen. "Children under the age of twelve may not be made the subject of a contract" at all. Women of whatever age, and children under the age of sixteen, may not engage in occupations in factories at night nor in commercial establishments after ten o'clock. They may not work in dangerous and unhealthful occupations. Women may not perform any considerable physical work during the three months immediately preceding and one month following childbirth; but they are to receive full pay and to enjoy the rights acquired as employees, despite the interruptions incident to childbirth. In addition, mothers are to have two extra half hours each day for rest and in order to nurse their children. Every employee is allowed one day in seven for rest. Overtime work may not exceed three hours nor extend over more than three consecutive days. In no case may women of whatever age and children under the age of sixteen engage in overtime work. A citizen contracting to do work in a foreign country must have his contract legalized before a competent municipal authority and viséed by the consul of the country to which he is going. There must be the distinct understanding that in addition to the usual clauses there shall be special stipulations whereby the employer assumes the cost of repatriation. Definite provisions are made for safeguarding the interest of the employees in contractual relations. Labor contracts become null and void when their terms demand notoriously excessive work; when the wage is insufficiently remunera-

tive; when the terms provide for more than one week before payment of wages; when it provides for the assigning of amusement places, hostelrys, saloons, and shops for the payment of wages when the employees thereof are not included; when there is a direct or indirect obligation to purchase articles of consumption in specified places; when the terms permit the retention of wages for fines; when the terms constitute a waiver on the part of the employees for the indemnities to which they are entitled; and when the terms imply the waiver of any right belonging by law to the employees. Moreover, employees may not be discharged without due notice and without cause for such discharge having been given to the Board of Conciliation and Arbitration. The employees who decline to abide by the decision of the board may terminate their contract at will; but the employers who decline to abide by the decision of the board may not terminate the contract without paying employees a sum of money equal to three months' wages and such damages as the employees may have incurred as a result of the termination of the contract by the employers (Art. 123).

The provisions for wage legislation are equally definite and precise. The minimum wage for the employee, head of a family, must be sufficient, according to the standards in the different sections of the state, to satisfy the normal needs of the employee, and for his education and lawful pleasures. In addition to the normal wage, the employees are entitled to a share in the profits of the establishment in which they are engaged as determined by special commissions in the different communities. The minimum wage is exempt from attachment, set off, or discount. This is likewise true in the case of bankruptcy or in composition. The claims, too, of the employees for wages must be preferred over that of any other claims. Wages must be paid in legal currency and not in merchandise, orders, counters, or in any other substitutes. Debts incurred by employees in favor of their employers, or the employers' associates, subordinates, or agents, may be charged against the employees themselves only and in no case and for no reason against the members of their families. Debts due the employers from the employees can be deducted



only from the wages for one month. Neither sex nor nationality may in any way affect the wages paid. Property legally constituting the family patrimony is inalienable and cannot be mortgaged or in any way attached, and may be bequeathed in due succession proceedings (Art. 123).

There are, moreover, many provisions governing the duties of the employers toward their employees and the community in addition to those already described. The employers are to furnish housing facilities for their employees in every place where one hundred or more employees are engaged. Rents not to exceed one half of one per cent of the assessed valuation of the properties may be charged by the employers for the upkeep of such dwellings. Employers must also furnish schools, dispensaries, and other services necessary. In labor centers with a population of at least two hundred there is to be set aside a space of land not to exceed five thousand square meters for the establishment of public markets, the construction of buildings for municipal services, and places of amusement. Saloons and gambling houses may not, however, operate in such centers. All places of work are, of course, to comply with all the regulations tending to insure hygienic and sanitary working conditions. Due care is to be taken to prevent accidents in the use of machinery, tools, and all working materials. Employers are to be at all times responsible for the accidents to the employees and for occupational diseases arising from such work. Indemnification is to be made by the employers in accordance with the nature of the accident and death from diseases or disabilities (Art. 123).

There are also provisions permitting employees and employers the legal right to unite for purposes of protection and of improving their conditions. Syndicates and unions are recognized as legal institutions with permission to function as long as they comply with the law. The right to strike and to lockout is also recognized as legal weapons to be used in case of necessity. This right is, however, denied the employees of the federal government and those in all military establishments in times of peace as well as war, and to those engaged in industries which may be necessary for the successful prosecution of war. Ten days' notice must be

given the Board of Conciliation and Arbitration before a strike or a lockout may be called. Differences between labor and capital are to be referred to this board for final settlement. The board is to be made up of an equal number of representatives from labor and capital with one representative from the federal government. Finally, employment bureaus, municipal offices, and other private or public agencies, finding work for employees, may charge no fees whatsoever for their services (Art. 123).

The federal and state governments are also to encourage the organization of social insurance (*Cajas de Seguros Populares*) for old age, sickness, life, unemployment, accidents, and other misfortunes. This is done "in order to instil and inculcate popular habits of thrift" (Art. 123). There are provisions, furthermore, safeguarding the individual's right to choose whatever occupation he may desire and to receive compensation on his own part for services rendered (Art. 5). The document is equally definite in matters dealing with unfair competition and monopolies. Any attempt to stifle competition, to corner the market, or to create unfair and exclusive advantages in favor of any one person or persons to the detriment of the public in general, or of any special class of society, are to be severely dealt with. But associations of labor, cooperative associations, or unions of producers, are not to be deemed monopolies providing they operate in defense of their own interests or those of the general public. Exemption from taxation, any restriction of personal liberty, even under cover of protection to industry, and all private and governmental monopolies are to be forbidden. Those monopolies regulating the coinage of money, the postal, telegraphic, and radio-telegraphic services, the issuance of bills by a single banking institution, all are to be controlled by the federal government. The law is also to concede to authors, artists, and inventors the privilege for a definite period of time of reproduction of their work (Art. 28).

Religious reform, in addition, is given a very important place. The student of clericalism as a political factor readily comprehends the genuine repugnance of the Mexicans to the political activities of the Church, and understands fully the reasons for the thorough and complete subordination of the Church to the

State. The very grave wrongs and the injury done the Mexican people by clericalism will be accepted by the student as ample justification for this complete elimination of ecclesiastical interests from the civil affairs of the State. A very large majority of the people have long desired to rid themselves, root and branch, of clerical domination admittedly the cause of a large share of the national ills. The historian will not fail to realize that these reforms are directed against clericalism, of whatever nature, and not against religion as such. He understands full well that the Mexicans are a very devout people and that the great majority of them—fully ninety-eight per cent—worship according to the rites of the Roman Catholic Apostolic Church. The damage done to church property by the soldiery during the recent revolution was not committed because of hatred of Roman Catholicism, but rather as a protest against the abuses of many of the conservative clergy in spreading propaganda inimical to the best interests of the people. The reforms, therefore, are directed against those forms of religious activity, irrespective of creeds, considered a menace to republican institutions and a grave danger to the State. Very many of the reforms inserted in the constitution of 1917 will be found in the constitution of 1857, in the famous Laws of Reform (*Leyes de Reformas*) of 1874, as well as in the philosophical writings of Gómez Farías.

The complete control over all religious worship and all outward ecclesiastical forms is placed in the federal authorities. The privilege to embrace the religion of one's choice, and to practice all ceremonies, devotions, or observances of any particular creed, either in places of public worship or at home, is fully guaranteed, provided always that these do not constitute an offense punishable by law. Every act of public worship is to be performed within assigned places; these places must at all times be under direct governmental supervision (Art. 24). The congress has no right to enact any law establishing or prohibiting any particular form of religion in Mexico. Moreover, "the law recognizes no juridical personality (*personalidad alguna*) in the religious institutions known as churches". All establishments of monastic and religious orders are absolutely forbidden. The ministers of whatever creed are considered merely as persons exercising a profes-

sion, and are accordingly subject to the laws governing professions. "Only a Mexican by birth may be a minister of any religious creed in Mexico." In addition, and with evident purpose of controlling clerical activities of a political nature, it is provided that religious institutions of whatever description, and all ministers of whatever creed, shall have no legal capacity to acquire ownership in real properties or in water rights. Moreover, no religious institution and no ecclesiastic shall have a legal right to hold or administer properties or to make loans on real estate. All property in possession of religious institutions, and of all individuals exercising the profession of religion, at the time of the adoption of this constitution, are confiscated and the ownership of such property is vested in the nation. The state and territorial governments are to determine which of the religious buildings shall be used for temples of public worship, the number of such temples, as well as the number of ministers of each community. New structures may be erected only with the permission of the Department of the Interior (*Gobernación*). The temples so constructed belong to the nation and may be used for public worship only. Such temples are always subject to the careful supervision and inspection of the governmental authorities. The caretaker, together with ten citizens is to be directly responsible under the government for the proper management of the houses of public worship. Moreover, it is provided that episcopal residences, rectories, seminaries, orphan asylums, collegiate establishments of religious institutions, convents, and other buildings constructed or designed for the administration, propaganda, or teaching of the tenets of any religious creed, shall belong to the nation. All such buildings are to be used exclusively for religious services. In addition, all charitable institutions, private and public; all institutions for scientific research, or for the diffusion of knowledge; all buildings of mutual aid societies, or organizations formed for any lawful purpose, may in no case whatsoever be under the patronage, direction, administration, or supervision of religious corporations, institutions, or ministers of any creed, or of any of their dependents. It is furthermore provided that these institutions and persons may not acquire ownership in lands or make loans on real property where the

terms of the contract exceed five years. No ecclesiastic may inherit either in his own name, or through any agent, real property of any kind; he is also legally incapable of inheriting by will any real property or money from a fellow ecclesiastic, or from any person to whom he is not related by blood to within the fourth degree. To prevent the resumption of clerical influence in politics, it is expressly provided that no minister has a right to vote, to hold a public office, to be a candidate, or to take part in any way in political affairs. Meetings of a political nature may not be held in the temples of public worship. Religious periodicals of every kind are strictly forbidden to criticize the fundamental laws of the land, the public authorities, or in any way to interfere with the policies of the different governmental bodies (Art. 130).

In the field of education, there are likewise to be very definite restrictions upon the privileges of religious institutions and all ministers. Religious organizations may not engage in primary instruction, either in private or in public institutions: all such education must be secular and gratuitous (Art. 3). As if to put a finality to it all, trial by jury for the infraction of any of the laws dealing with religious matters is strictly forbidden (Art. 130).

Such are the more important social aspects of the new Mexican Constitution of 1917. The question that naturally arises is whether or not these reforms will be put into practical use. To be sure the Mexicans may not be able to solve their problems under the present régime. There may even be need of other constitutions. Yet, with forceful convictions, resolute minds, and determined ambitions, the people themselves are bound ultimately to triumph. It is, after all, the men at the helm in Mexico in whom the world at large is more especially interested. The men now at the helm are "new" men, the sons of revolutions. In them there appears an earnest desire to carry out the wishes of the mass of the people. When this is done, Mexico will be one of the most enlightened and genuinely democratic of modern nations. It is in the furtherance of this end, through altruistic motives, that the people of the United States of North America can render Mexico and humanity the greatest service.

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